

IN THE DISTRICT COURT FOR
THE STATE OF DELAWARE
DISTRICT 02

1

Atlantic States Legal Foundation,
Plaintiff

v.

CIVIL ACTION NO. 86-481

Standard Chlorine Of Delaware, Inc.
Defendant

COMPLAINT

INTRODUCTION

This action is a citizen suit, brought under Section 505 of the Federal Water Pollution Control Act ("the Act"), as amended, 33 U.S.C. §1365. Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties and the award of costs, including attorneys' and expert witness' fees, for defendant's violation of the terms and conditions of its National Pollutant Discharge Elimination System (NPDES) permit # DE002001 in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under Section 505(a) of the Act, 33 U.S.C. §1365(a).
2. On November 5, 1985, Plaintiff gave notice of the violations and of its intent to file suit to the Administrator of the Environmental Protection Agency, to the State of Delaware Department of Natural Resources, and to defendant, as required by Section 505(b)(1)(A) of the Act, 33 U.S.C. §1365(b)(1)(A). A copy of the notice letter is attached hereto as Appendix A.
3. More than sixty (60) days have passed since notice was served and neither EPA nor the State of Delaware has commenced and is diligentl prosecuting a civil or criminal action to redress these violations.
4. Venue is appropriate in the District Court for the State of Delaware pursuant to Section 505(c)(1), 33 U.S.C. §1365(c)(1), because the source of the violations complained of is located within this District.

AR200010

THE PARTIES

5. Plaintiff, Atlantic States Legal Foundation, Inc. (ASLF), sues on behalf of both itself and its members. ASLF is a not-for-profit corporation organized under the laws of the State of New York with its principal place of business in Syracuse, New York.
6. ASLF is a membership organization with members in Delaware. ASLF is dedicated to protecting and restoring the natural resources, particularly the water resources of Delaware. To this end, ASLF engages in activities designed to increase the public's environment and to further the public's understanding of the need of people to live within the natural environment without destroying its ecology.
7. Members of ASLF reside in Delaware, in the vicinity of or own property or recreate in, on or near the Delaware River which is affected by defendant's discharge of pollutants complained of herein. The recreational, aesthetic and environmental interests of ASLF's members have been, are being, and will be adversely affected by defendant's violations of the terms, conditions, effluent standards and limitations of its permit DE 0020001.
8. Defendant, Standard Chlorine of Delaware, Inc. is a corporation doing business in the State of Delaware.

THE FACTS

9. The Administrator of the Environmental Protection Agency, pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. §1342, issued NPDES permit DE 0020001 to defendant, authorizing defendant to discharge a limited quantity of pollutants from its Delaware City, Delaware facility into the Delaware River. The Delaware River is a navigable water of the United States.
10. Section 308 of the Act, 33 U.S.C. §1318, requires NPDES permit holders to establish and maintain records, install, use and maintain monitoring equipment, sample effluents and report on a regular basis to the permit-issuing authority regarding the facility's discharge of pollutants. These reports consist of Discharge Monitoring Reports (DMRs) and Noncompliance Reports (NCRs).
11. Appendix A to this Complaint, plaintiff's Notice of Intent to Sue, contains a list of numerous violations of the effluent standard limitations, terms and conditions of defendant's permit which were taken directly from the DMRs and/or NCRs defendant is required by law to submit, pursuant to the reporting requirements of federal and state law. That list is incorporated herein by reference.
12. Defendant's violations of the Act have been numerous and repeated. On information and belief, plaintiff alleges that defendant has violated its permit limitations subsequent to the violations listed in Appendix A and continues to be in violation of the Act.
13. Because of this history of violations, plaintiff believes and alleges that, without imposition of an injunction, defendant will continue to violate its NPDES permit to the further injury of plaintiff and others.

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4. Section 301(a) of the Act, 33 U.S.C. 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States unless in compliance with various enumerated sections of the Act. Section 301(a) prohibits, inter alia, such discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.

15. Defendant's pollutant discharges, as listed in Appendix A to this Complaint, and those which have been committed subsequent to those listed in Appendix A, are violations of its permit DE 0020001 and are violations of Sections 301(a) and 402 of the Act, 33 U.S.C. 1311(a) and 1342.

RELIEF

WHEREFORE, plaintiff respectfully requests this Court to grant the following relief:

A. Issue a declaratory judgment that defendant, Standard Chlorine of Delaware Inc., has violated and continues to be in violation of Sections 301 and 402 of the Federal Water Pollution Control Act, 33 U.S.C. §§1311 and 1342;

B. Enjoin defendant from operating its Delaware City facility in such a manner as will result in further violations of defendant's permit DE0020001;

C. Order defendant to provide plaintiff, for a period beginning on the date of this Court's order and running for one year thereafter a copy of all reports and other documents which defendant submits to federal and/or state agencies regarding defendant's NPDES permit;

D. Order defendant to pay civil penalties of \$10,000 per day of violation for each violation pursuant to Section 309(d) and 505(a) of the Act, 33 U.S.C. §1319(c) and 1365(a), including those listed in Appendix A and violations committed thereafter;

E. Award plaintiff its costs, including reasonable attorneys' and expert witness fees, as authorized by Section 505(d) of the Act, 33 U.S.C. §1365(d); and

F. Award such other relief as this Court deems appropriate.

DATED: 10/16/86

Respectfully submitted,

Kathleen Butler
KATHLEEN BUTLER, ESQ.

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AR200012

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Gentlemen:

Section 505(b) of the Clean Water Act, 33 U.S.C. 1365(b), requires that sixty (60) days prior to the institution of a civil action under the authority of Section 505(a) of the Clean Water Act, 33 U.S.C. 1365(a), a citizen must give notice of intent to sue.

You are hereby given notice that, after the expiration of sixty (60) days from the date on this NOTICE OF INTENT TO SUE, the Atlantic States Legal Foundation will file a civil action in Federal District Court.

This lawsuit will allege that the New Castle County plant of Standard Chlorine of Delaware, Inc., which discharges into the Delaware River and is located in Delaware City, Delaware, has violated and continues to violate "an effluent standard or limitation", Section 505(a)(1)(A) of the Clean Water Act, by not complying with its NPDES (Section 402) permit DE 0020001 in the following respects:

AR200013

A. At Outfall 001, the permit limitation for the daily average discharge of Iron is 2.0 mg/l and 8 lbs/day. Your records show that you discharged:

	<u>Reported Value</u>	<u>Reported in the DMR for:</u>
1.	4 mg/l	January, 1982
2.	14.42 lbs/day	January, 1982
3.	2.51 mg/l	February, 1982
4.	9.2 lbs/day	February, 1982
5.	28.6 lbs/day	March, 1982
6.	6.43 mg/l	March, 1982
7.	2.96 mg/l	May, 1982
8.	5.1 mg/l	July, 1982
9.	4.45 mg/l	August, 1982
10.	3.37 mg/l	July, 1984
11.	2.3 mg/l	February, 1985
12.	2.96 mg/l	June, 1985

B. At Outfall 001, the permit limitation for the daily maximum discharge of Iron is 3.0 mg/l and 12 lbs/day. Your records show that you discharged:

	<u># of Times</u>	<u>Max. Reported Value</u>	<u>From the DMR for:</u>
1.	two	6.05 mg/l	January, 1982
2.	two	21.89 lbs/day	January, 1982
3.	five	49.7 lbs/day	March, 1982
4.	four	12.17 mg/l	March, 1982
5.	two	4.51 mg/l	May, 1982
6.	three	7.8 mg/l	July, 1982
7.	four	7.32 mg/l	August, 1982
8.	one	12.82 lbs/day	August, 1982
9.	one	4.47 mg/l	September, 1982
10.	one	14.17 lbs/day	September, 1982
11.	two	6.16 mg/l	July, 1984
12.	two	17.2 lbs/day	July, 1984
13.	one	3.2 mg/l	February, 1985
14.	two	4.35 mg/l	June, 1985

C. At Outfall 001, the permit limitation for the daily average discharge of Lead is .15 mg/l and .6 lbs/day. Your records show that you discharged:

	<u>Reported Value</u>	<u>Reported in the DMR for:</u>
1.	.18 mg/l	May, 1983
2.	.66 lbs/day	May, 1983
3.	.2 mg/l	July, 1983
4.	.52 mg/l	March, 1984
5.	1.56 lbs/day	March, 1984
6.	.18 mg/l	May, 1984
7.	.63 lbs/day	May, 1984
8.	.49 mg/l	June, 1984
9.	1.18 lbs/day	June, 1984
10.	.22 mg/l	November, 1984

AR200014

D. At Outfall 001, the permit limitation for the daily maximum discharge of Lead is .23 mg/l and .9 lbs/day. Your records show that you discharged:

	<u># of Times</u>	<u>Max. Reported Value</u>	<u>From the DMR for:</u>
1.	one	.52 mg/l	March, 1984
2.	one	1.56 lbs/day	March, 1984
3.	one	.49 mg/l	June, 1984
4.	one	1.18 lbs/day	June, 1984

E. At Outfall 001, the permit limitation for the daily average discharge of Total Suspended Solids is 30 mg/l and 120 lbs/day. Your records show that you discharged:

	<u>Reported Value</u>	<u>Reported in the DMR for:</u>
1.	34.88 mg/l	June, 1983
2.	143.6 lbs/day	June, 1983
3.	53.9 mg/l	December, 1983
4.	168 lbs/day	December, 1983
5.	165 lbs/day	January, 1984
6.	31.7 mg/l	February, 1984
7.	85 mg/l	March, 1984
8.	297 lbs/day	March, 1984
9.	30.1 mg/l	May, 1984
10.	48 mg/l	June, 1984
11.	131 lbs/day	June, 1984
12.	36.1 mg/l	July, 1984
13.	53.5 mg/l	August, 1984
14.	137 lbs/day	August, 1984
15.	48.3 mg/l	September, 1984
16.	147.7 lbs/day	September, 1984
17.	33 mg/l	October, 1984
18.	62 mg/l	November, 1984
19.	37.9 mg/l	December, 1984

F. At Outfall 001, the permit limitation for the daily maximum discharge of Total Suspended Solids is 45 mg/l and 180 lbs/day. Your records show that you discharged:

	<u># of Times</u>	<u>Max. Reported Value</u>	<u>From the DMR for:</u>
1.	one	53.20 mg/l	June, 1983
2.	one	270.6 lbs/day	June, 1983
3.	three	71.5 mg/l	December, 1983
4.	three	241 lbs/day	December, 1983
5.	two	227 lbs/day	January, 1984
6.	one	60 mg/l	February, 1984
7.	four	120 mg/l	March, 1984
8.	four	455 lbs/day	March, 1984
9.	two	100 mg/l	June, 1984
10.	two	280 lbs/day	June, 1984
11.	one	59 mg/l	July, 1984
12.	two	87.5 mg/l	August, 1984
13.	two	219 lbs/day	August, 1984
14.	ten	83 mg/l	September, 1984
15.	ten	298.8 lbs/day	September, 1984
16.	one	57 mg/l	October, 1984
17.	four	154 mg/l	November, 1984
18.	two	60 mg/l	December, 1984

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G. At Outfall 001, the permit limitation for the daily average discharge of Mercury is .02 lbs/day and .005 mg/l. Your records show that you discharged:

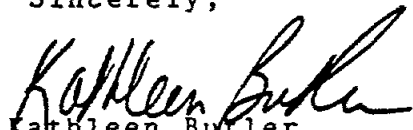
	<u>Reported Value</u>	<u>Reported in the DMR for:</u>
1.	.098 lbs/day	June, 1985
2.	.039 mg/l	June, 1985
③ 3.	.006 mg/l	March, 1985

H. Because of a December, 1981 Consent Order filed in the Superior Court for Kent County, Notifier addresses only those permit violations occurring after the expiration of the applicable terms of that Consent Decree, to wit Paragraph 10 which states that civil liability has been satisfied for permit violations occurring up to the entry date of the Consent Order (December 30, 1981); therefore, Notifier will address only those permit violations occurring on or after January 1, 1982.

We intend, at the close of the sixty (60) day notice period, to file a citizen suit under Section 505 of the Clean Water Act against your company for the statutory maximum of \$10,000/day for each violation stated above, in addition to those occurring subsequently, plus costs, attorney and expert witness fees, and such other relief as may be appropriate.

During the sixty (60) day notice period, we will be available to discuss effective remedies and actions which will assure your company's future compliance with the terms and conditions of its permit. If you wish to avail yourself of this opportunity, or if you have any questions regarding this letter, please contact me.

Sincerely,


Kathleen Butler
Counsel for Notifier

AR200016

cc:

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AR200017